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5 *Attorney for Defendant:*  
CARLOS E. KEPKE  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14 v.  
15 CARLOS E. KEPKE,  
16 Defendant.  
17

Case No. 3:21-CR-00155-JD

**UNOPPOSED EX PARTE MOTION TO  
SET STATUS CONFERENCE FOR  
ZOOM VIDEOCONFERENCE;  
DECLARATION IN SUPPORT OF  
MOTION; [PROPOSED] ORDER**

Date: Oct. 18, 2021  
Time: 10:30 a.m.  
Courtroom: 11  
Judge: Hon. James Donato

**EX PARTE MOTION**

Pursuant to Criminal Local Rules 47-1, 47-3, and 2-1, Civil Local Rule 7-11, and Federal Rule of Criminal Procedure 43, Defendant Carlos E. Kepke (“Kepke”), by and through his counsel, hereby respectfully moves the Court to issue an Order setting the October 18 status conference for a Zoom videoconference.

Good cause in support of this motion is set forth more fully in the attached declaration of Grant P. Fondo (“Fondo Decl.”), counsel for Kepke, including a more detailed discussion of Kepke’s current medical condition. Briefly, Kepke, who is an eighty-two-year-old long-term resident of Houston, Texas, has an extended history of heart disease and heart failure, having suffered two heart attacks and other heart-related medical procedures. Fondo Decl., ¶¶ 2, 5-8. The most recent heart attack, in late 2019, required triple-bypass open-heart surgery and involved complications that resulted in an extended stay in the intensive care unit. Fondo Decl., ¶¶ 2, 5-8. While Kepke is vaccinated against COVID-19, during his travels between Houston and San Francisco to attend the October 18 status conference, Kepke faces a nontrivial risk of being exposed to a COVID-19 carrier and the attendant risk of a breakthrough infection. *Id.*, ¶¶ 9-11. There is also the risk that, if exposed, Kepke will transmit COVID-19 to his spouse, who herself suffered a heart attack in the last two years. *Id.*, ¶ 9. Kepke understands—and waives—his rights to personally appear at a status conference under Rule 43 of the Federal Rules of Criminal Procedure and respectfully requests the Court set the October 18 status conference for a Zoom videoconference. *Id.*, ¶ 12.

The Government does not object to the relief sought herein. *Id.* ¶ 13.

Respectfully submitted,

Dated: September 30, 2021

By: /s/ Grant Fondo  
 GRANT P. FONDO (SBN 181530)  
 GFondo@goodwinlaw.com  
**GOODWIN PROCTER LLP**

*Attorney for Defendant:*  
 CARLOS E. KEPKE

**DECLARATION OF GRANT P. FONDO**

I, Grant P. Fondo, declare as follows:

1. I am a partner with the law firm Goodwin Procter LLP and a member in good standing of the bar of this Court. I represent Defendant Carlos E. Kepke (“Kepke”) in the above-captioned matter. I submit this declaration in connection with the Unopposed Ex Parte Motion to Set Status Conference for Zoom Videoconference. Unless stated otherwise, this declaration is based on my personal knowledge; if called as a witness, I could and would testify as follows:

2. Kepke, an eighty-two-year-old long-term resident of Houston, Texas, made his initial appearance in the above-captioned matter on April 22, 2021 by Zoom videoconference, before Magistrate Judge Jacqueline Scott Corley. Judge Corley then entered an order setting Kepke’s conditions of release and setting a status conference hearing for June 30, 2021 before Judge James Donato.

3. On June 30, 2021, Kepke appeared before Judge Donato by Zoom videoconference. Judge Donato then entered an order setting a status conference for October 13, 2021.

4. On August 23, 2021, the clerk entered a notice on the docket in the above-captioned matter stating that the status conference had been continued to October 18, 2021. Subsequent to the clerk’s notice, I learned that the Court had set the October 18 status conference for an in-person appearance.

5. Kepke is retired, and a long-time resident of Houston, Texas. Kepke, whose family has a history of heart disease, has himself suffered two heart attacks, various heart-related medical procedures, and additional health issues, which are not detailed herein for the sake of brevity. Kepke’s two heart attacks, in addition to his advanced age, mean he is at greater risk for complications from COVID-19, including, but not limited to, blood clotting that may result in Kepke suffering a third heart attack.

6. Kepke suffered his first heart attack in 1971 resulting from blockage in his coronary arteries. As a result, Kepke spent over a week in the intensive care unit (the “ICU”) and has seen a cardiologist every year since 1971 to monitor his coronary arteries.

7. Kepke suffered his second heart attack in November 2019. The second heart attack

1 required invasive procedures and an extended stay in the ICU. While still recovering from his  
2 second heart attack in the ICU, Kepke experienced acute atrial fibrillation. Kepke's acute atrial  
3 fibrillation required repeated electrical shocks to his heart and immediate triple-bypass open-heart  
4 surgery. While medical professionals performed the triple-bypass open-heart surgery, they  
5 discovered a seventy-five percent (75%) blockage in Kepke's heart as a result of stenosis and  
6 calcium deposits. This significant blockage likely would have been fatal to Kepke had it not been  
7 discovered during the triple-bypass open-heart surgery. Following his triple-bypass open-heart  
8 surgery, Mr. Kepke again suffered complications including an irregular heartbeat that required  
9 additional electrical shocks to his heart.

10 8. I understand that Kepke's previous atrial-fibrillation episodes significantly increase  
11 his risk of future episodes of atrial fibrillation. In addition, the calcium deposits in Kepke's arteries  
12 make it impossible for Kepke to receive a stent—a common treatment for artery narrowing—  
13 forcing Kepke to take several medications and to receive regular monitoring for further blockage.  
14 As a result of Kepke's cardiac conditions, Kepke is regularly monitored for a weakened aortic  
15 valve that may require a replacement. At his advanced age, there is no guarantee Kepke would  
16 survive extensive, invasive surgeries, let alone a third cardiac event, which I understand a COVID-  
17 19 infection might precipitate.

18 9. Kepke is vaccinated against COVID-19. Still, the frequency of breakthrough  
19 infections makes Kepke worried about getting infected with COVID-19 or transmitting the virus at  
20 home to his wife, who herself suffered a heart attack in the last two years.

21 10. Appearing in person at the October 18 status conference would require Kepke to  
22 travel between Houston and San Francisco, including:

- 23 a. at least two days of travel including two flights, between San Francisco and
- 24 Houston, Texas;
- 25 b. one night of hotel lodging;
- 26 c. transportation to and from the San Francisco airport; and
- 27 d. transportation to and to and from the Court.

28 11. Kepke is concerned about his exposure to COVID-19 throughout such travel. His

1 flights, hotel stay, and car rides, each would require Kepke enter a confined space with individuals  
2 who may be asymptomatic carriers and, thus, potentially less sensitive to the best practices each of  
3 us has had to adopt during this challenging time. Given Kepke's age and his cardiac conditions,  
4 my understanding is that Kepke's concern is nontrivial.

5 12. I have previously advised Kepke of his rights under Rule 43 of the Federal Rules of  
6 Criminal Procedure. Kepke has confirmed that he waives any right to attend the October 18 status  
7 conference in person and respectfully requests the Court set the October 18 status conference for a  
8 Zoom videoconference.

9 13. On Thursday, September 30, 2021, I emailed counsel for the United States, AUSA  
10 Michael Pitman, to determine whether the Government had any objection to all parties appearing  
11 by Zoom instead of in person at the October 18 status conference. On September 30, 2021, AUSA  
12 Pitman confirmed that the Government had no objection to all parties appearing by Zoom for the  
13 October 18 status conference.

14  
15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct.

17 Executed on September 30, 2021.

18 /s/ Grant Fondo  
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20 GRANT P. FONDO  
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**[PROPOSED] ORDER**

Upon consideration of the Unopposed Ex Parte Motion of Defendant Carlos E. Kepke (“Kepke”) and the Declaration of Grant P. Fondo, IT IS HEREBY ORDERED as follows:

1. Kepke’s personal appearance is waived for the October 18, 2021 status conference.

2. The October 18 status conference shall proceed by Zoom videoconference.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
HON. JAMES DONATO  
UNITED STATES DISTRICT JUDGE